

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:08-HC-2099-BR

**FILED**

**AUG 26 2011**

DENNIS P. IAVARONE, CLERK  
US DISTRICT COURT, EDNC  
BY                      DEP CLK

UNITED STATES OF AMERICA,                     )  
   )  
                    Petitioner,                     )  
   )  
                    v.                                 )  
   )  
PHILIP JAMES KATON,                            )  
   )  
                    Respondent.                    )

**ORDER**

This case comes before the court on Petitioner's Motion for Voluntary Dismissal With Prejudice With Leave of Court (DE # 32), along with the 26 August 2011 Amended Settlement Agreement (DE # 35), which replaced the original Settlement Agreement that was signed by the parties on 25 August 2011 (DE # 32-1). The motion was referred to Magistrate Judge James E. Gates (see 1st Minute Entry after DE # 33), who held a hearing on it on 26 August 2011 (see DE # 34) pursuant to the referral and with the consent of the parties (DE # 36). In a Memorandum and Recommendation ("M&R") issued on 26 August 2011 by Judge Gates, he found that the Settlement Agreement was knowingly and voluntarily entered into and recommended allowance of the motion, and dismissal of the case as proposed by the parties. (M&R, DE # 37, at 2.) The parties have waived their right to object to the M&R and have requested that the M&R be adopted by the undersigned. (DE # 38.)

The court hereby ADOPTS the M&R as its own, and FINDS that respondent was fully competent to enter into the Settlement Agreement and that he knowingly and voluntarily did so after having an adequate opportunity to confer with counsel, and that the government also knowingly and voluntarily entered into the Settlement Agreement.

It is therefore ORDERED that:


1. the motion (DE # 32) is ALLOWED;
2. this case is DISMISSED WITH PREJUDICE pursuant to Federal Rule of Civil

Procedure 41(a)(2);

3. the stay of respondent's release from Federal Bureau of Prisons custody is LIFTED and respondent shall be RELEASED forthwith from Federal Bureau of Prisons custody; and

4. respondent shall report to the United States Probation Office for the United States District Court for the District of Vermont within 72 hours of his release in accordance with the amended criminal judgment entered by that court in the case of United States v. Philip Katon, Docket No. 1:03-CR-110 on 15 May 2006 (DE # 35). The Clerk is DIRECTED to send a copy of this order to the Clerk of Court for the District of Vermont, P.O. Box 998, Brattleboro, VT 05302-0998.

This 26 August 2011.

  
\_\_\_\_\_  
W. Earl Britt  
Senior U.S. District Judge